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HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1209 of 2013

1. Smt.Sarita Kujur, W/o Late Pankharasiyus Kujur Aged About 30 Years
2. Vishal Kujur S/o Late Pankharasiyus Kujur Aged About 10 Years
3. Pooja Kujur D/o Late Pankharasiyus Kujur Aged About 5 Years

Appellants 2 and 3 Minors, Thru- Mother Smt. Sarita Kujur, natural guardian, R/o Mahlang, Sahaspur, P.S. Farshabahar, District : Jashpur, Chhattisgarh

---- Appellants

Versus

- The Bajaj Alliance Co.Ltd. Through- Branch Manager, Shiv Mohan Bhawan, Vidhansabha Marg, Pandari, Raipur, Distt. Raipur, Chhattisgarh

----Respondent

For Appellants	:	Shri Hemant Gupta, Advocate
For Respondent	:	Shri SS Rajput, Advocate

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Order on Board

Per Parth Prateem Sahu, J.
09.07.2020

1. Appellants / claimants have challenged legality, propriety and validity of the impugned award dated 24.06.2013 passed in claim case No.58 of 2009 by the Additional Motor Accidents Tribunal, Jashpur (for short, 'Claims Tribunal'), wherein learned Claims Tribunal allowed the claim application only to the extent of contractual liability of the Insurance Company under the policy.

2. Facts relevant for disposal of this appeal are that, on 27.03.2009 at about 9.10 pm deceased Kujur was riding on his Motor Cycle bearing No. CG 14 B 3997 (for short “offending vehicle”) and returning to his house from village Tongaritola. On the way, due to some mechanical fault handle of offending vehicle got locked due to which offending vehicle

dashed a tree on the road side. Driver of offending vehicle suffered grievous injuries over his person and succumbed to those injuries on the spot. The accident was reported to concerned police station based on which Crime No. 16 of 2009 was registered.

3. Claimants, who are widow and children of deceased have filed application under section 163A of Motor Vehicles Act 1988 claiming compensation of Rs.36,97,312/- mentioning therein that deceased was working as teacher at Government Higher Middle School, Pandaripani and earning Rs.9126/- per month.

4. Non-applicant/Insurance company submitted reply to the claim application denying pleadings in the application and further pleaded that on the date of accident deceased himself was driving offending vehicle and being so, he cannot come within the category of third party. It is also pleaded that in the facts and circumstances of the case, the claimants would not be entitled for any amount of compensation under Section 163A of the Motor Vehicle Act, 1988. It is also pleaded that deceased himself was owner of the offending vehicle and being the insured he cannot be recipient of the amount of compensation.

5. Learned claims tribunal on appreciation of pleadings and evidence placed on record by respective parties and further taking note of the judgment passed by this court in the matter of **Bajaj Alliance Insurance Company Vs Smt.Savita and others** in MAC No.33 of 2012 held that when the owner of the offending vehicle and insured who himself met with an accident while driving the offending vehicle, the application filed under

section 163A of Motor Vehicle Act, 1988 by the claimants, who are legal heirs of the deceased to be not maintainable. Learned Claims Tribunal further taking into consideration that policy issued by the company was a Package Policy and risk of owner / driver was covered, directed to pay the amount of Rs.1,00,000/- towards the contractual liability of the Insurance Company to the claimants.

6. Shri Hemant Gupta, learned counsel for the appellants submits that accident was not on account of negligence on the part of driver-cum-owner of offending vehicle, but it is on account of mechanical fault of offending vehicle that occurred at the time of driving of offending vehicle. He also submits that application filed by the claimants under Section 163A of Motor Vehicle Act,1988 would be maintainable as the policy issued by the Insurance Company is of Package Policy, and suitable amount of compensation under provisions of Section 163A of Motor Vehicle Act,1988 ought to have been awarded to the claimants.

7. Per contra, Shri SS Rajput, learned counsel for the Insurance Company submits that deceased being owner of offending vehicle and insured, he will not come within the category of third party. Application filed by legal heirs of deceased under Section 163A of Motor Vehicle Act,1988, for compensation on account of injury / death of owner of a two wheeler would not be maintainable. He further submits that liability of the Insurance Company will be only contractual liability under the policy and risk covered under the policy for owner / driver was only for an amount of Rs.1,00,000/- which was awarded by the learned Claims Tribunal which was also satisfied by the Insurance Company.

8. We have heard learned counsel for the parties and perused the record.

9. Hon’ble Supreme Court in the matter of **Ningamma & Another Vs United India Insurance Company Limited** reported in (2009) 13 SCC 710 while considering the claim under Section 163A of Motor Vehicle Act, 1988 filed by legal representatives of the deceased, who himself was driving the offending vehicle, held thus:

> "22. In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.
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> 23. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA and to that extent the High Court was justified in coming to the conclusion that the said provision is not applicable to the facts and circumstances of the present case."

10. Recently, Hon’ble Supreme Court yet in another case considered the maintainability of claim application filed under Section 163A of Motor Vehicle Act, 1988 in case of **Ramkhiladi and another Vs United India Insurance Company and another** reported in AIR 2020 SC 527, considering its earlier decisions including **Ningamma** (supra), again considered claim filed under Section 163A of Motor Vehicle Act,1988 by

the legal representatives of deceased / driver of offending vehicle (two wheeler) held thus:

> "5.3 While answering the finding recorded by the learned Tribunal on Issue No. 2, it appears that, as such, the learned Tribunal has not at all answered the aforesaid issue. While answering Issue No. 2, there is no specific finding whether the deceased/driver was in employment of the opponent-owner Bhagwan Sahay or not. Even otherwise, no evidence is led by the claimants to prove that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay. Despite the above, while answering Issue No. 4 there is some observation made by the learned Tribunal that the deceased-driver was in employment of the opponent-owner Bhagwan Sahay, which is not supported by any evidence on record. Under the circumstances, the deceased-driver cannot be said to be in employment of the opponent-owner Bhagwan Sahay and, therefore, he can be said to be permissible user and/or borrower of motor vehicle owned by the opponent owner Bhagwan Sahay. With these findings, the main question posed for consideration of this Court referred to herein above is required to be considered.
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> 5.4 An identical question came to be considered by this Court in the case of Ningamma *(AIR 2009 SC 3056)* (supra). In that case, the deceased was driving a motorcycle which was borrowed from its real owner and met with an accident by dashing against a bullock cart i.e. without involving any other vehicle. The claim petition was filed under Section 163A of the Act by the legal representatives of the deceased against the real owner of the motorcycle which was being driven by the deceased. To that, this Court has observed and held that since the deceased has stepped into the shoes of the owner of the vehicle, Section 163A of the Act cannot apply wherein the owner of the vehicle himself is involved. Consequently, it was held that the legal representatives of the deceased could not have claimed the compensation under Section 163A of the Act. Therefore, as such, in the present case, the claimants could have even claimed the compensation and/or filed the claim petition under Section 163A of the Act against the driver, owner and insurance company of the offending vehicle i.e. motorcycle bearing registration No. RJ 29 2M 9223, being a third party with respect to the offending vehicle. However, no claim under Section

163A was filed against the driver, owner and/or insurance company of the motorcycle bearing registration No. RJ 29 2M 9223. It is an admitted position that the claim under Section 163A of the Act was only against the owner and the insurance company of the motorcycle bearing registration No. RJ 02 SA 7811 which was borrowed by the deceased from the opponentowner Bhagwan Sahay. Therefore, applying the law laid down by this Court in the case of Ningamma (supra), and as the deceased has stepped into the shoes of the owner of the vehicle bearing registration No. RJ 02 SA 7811, as rightly held by the High Court, the claim petition under Section 163A of the Act against the owner and insurance company of the vehicle bearing registration No. RJ 02 SA 7811 shall not be maintainable.

5.5 It is true that, in a claim under Section 163A of the Act, there is no need for the claimants to plead or establish the negligence and/or that the death in respect of which the claim petition is sought to be established was due to wrongful act, neglect or default of the owner of the vehicle concerned. It is also true that the claim petition under Section 163A of the Act is based on the principle of no fault liability. However, at the same time, the deceased has to be a third party and cannot maintain a claim under Section 163A of the Act against the owner/insurer of the vehicle which is borrowed by him as he will be in the shoes of the owner and he cannot maintain a claim under Section 163A of the Act against the owner and insurer of the vehicle bearing registration No. RJ 02 SA 7811. In the present case, the parties are governed by the contract of insurance and under the contract of insurance the liability of the insurance company would be qua third party only. In the present case, as observed hereinabove, the deceased cannot be said to be a third party with respect to the insured vehicle bearing registration No. RJ 02 SA 7811. There cannot be any dispute that the liability of the insurance company would be as per the terms and conditions of the contract of insurance. As held by this Court in the case of Dhanraj (supra), an insurance policy covers the liability incurred by the insured in respect of death of or bodily injury to any person (including an owner of the goods or his authorized representative) carried in the vehicle or damage to any property of <u>a third party</u> caused by or arising out of the use of the vehicle. In the said decision, it is further held by this Court that Section 147 does not require an insurance company to assume risk for death or bodily injury to the owner of the vehicle.

5.9 Now, so far as the submission made on behalf of the claimants that in a claim under Section 163A of the Act mere use of the vehicle is enough and despite the compensation claimed by the heirs of the owner of the motorcycle which was involved in the accident resulting in his death, the claim under Section 163A of the Act would be maintainable is concerned, in view of the decision of this Court in Rajni Devi (supra), the aforesaid cannot be accepted. In Rajni Devi (AIR Online 2008 SC 33) (supra), it has been specifically observed and held that the provisions of Section 163A of the Act cannot be said to have any application with regard to an accident wherein the owner of the motor vehicle himself is involved. After considering the decisions of this Court in the cases of Oriental Insurance Co. Ltd. V. Jhuma Saha (2007) 9 SCC 263: (AIR 2007 SC 1054); Dhanraj (AIR 2004 SC 4767) (supra); National Insurance Co. Ltd. V. Laxmi Narain Dhut (2007) 3 SCC 700 : (AIR 2007 SC 1563) and Premkumari v. Prahlad Dev (2008) 3 SCC 193 : (AIR 2008 SC 1073) it is ultimately concluded by this Court that the liability under Section 163A of the Act is on the owner of the vehicle as a person cannot be both, a claimant as also a recipient and, therefore, the heirs of the owner could not have maintained the claim in terms of Section 163A of the Act. It is further observed that, for the said purpose, only the terms of the contract of insurance could be taken recourse to. In the recent decision of this Court in the case of Ashalata Bhowmik (AIR 2018 SC 4133) (supra), it is specifically held by this Court that the parties shall be governed by the terms and conditions of the contract of insurance. Therefore, as per the contract of insurance, the insurance company shall be liable to pay the compensation to a third party and not to the owner, except to the extent of Rs.1 lakh as observed herein above."

11. In light of above decisions, if the facts of present case are considered, it is clear that the deceased was owner, driver and insured of offending vehicle and therefore, claim application filed by the claimants/legal representatives under Section 163A of Motor Vehicle Act, 1988 would not be maintainable and learned Claims Tribunal has rightly

held so. Learned Claims Tribunal however, considered contractual liability of the company under the policy and awarded an amount of Rs.1,00,000/- towards coverage of risk of owner / driver.

12. In view of above discussion, we do not find any infirmity or illegality in the award passed by the learned Claims Tribunal. The appeal being devoid of any substance, which is liable to be and it is hereby dismissed.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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